IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN

FRIDAY, THE 20TH JULY 2007 / 29TH ASHADHA 1929

CRP.No. 2703 of 2001()

OS.493/1996 of PRL.MUNSIFF'S COURT, KOZHIKODE-II
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REVN. PETITIONER/PLAINTIFF:

MALEVEETTIL BEEPATHUMMA, D/O.ALIKOYA,
AGED 61 YEARS, CHALIYAM, KADALUNDI AMSOM AND DESOM,
KOZHIKODE DISTRICT.

ADDL. 2. M.V.SUHARA, D/O.M.V.MOHAMMED KOYA, AGED 47 YEARS,
KADULUNDI AMSOM, PAZHANJANNOOR DESOM, KOZHIKODE TALUK.

" 3. M.V.ABUL RASHEED, S/O.M.V.MOHAMMED KOYA, AGED 39 YEARS,
-DO- -DO-

" 4. M.V.RAMLA, D/O.M.V.MOHAMMED KOYA, AGED 47 YEARS, -DO- -DO-

(ADDL.REVISION PETITIONERS 2 TO 4 ARE IMPLEADED AS THE LEGAL HEIRS OF THE DECEASED SOLE PETITIONER AS PER ORDER DTD. 4/4/06 \ IN C.M.P.NO.1848/03)

BY ADV. SRI.SURESH KUMAR KODOTH
SRI.V.T.MADHAVANUNNI

RESPONDENTS/DEFENDANTS:
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1. T.AYISHA, D/O.MUHAMMED, AGED 58 YEARS,
ANCHUDICAL, KADALUNDI AMSOM AND DESOM, KOZHIKODE DIST.

2. T.BEEPATHUMMA, D/O.MUHAMMED, AGED 55 YEARS, -DO-

3. T.UMMER, S/O.MUHAMMED, AGED 53 YEARS, -DO-

4. T.SAINABA, D/O.MUHAMMED, AGED 49 YEARS, -DO-

5. T.MOIDEENKUTTY, S/O.MUHAMMED, AGED 45 YEARS, -DO-

6. T.JAMEELA, D/O.MUHAMMED, AGED 40 YEARS, -D0-

7. T.HAMSAKOYA, S/O.MUHAMMED, AGED 38 YEARS, -DO-

8. T.NAFEESAKUTTY, D/O.MUHAMMED AGED 33 YEARS, -DO-

R3 BY ADV. SRI.P.M.MOHAMMED SHIRAZ

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 20/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ORDER ON CMP.NO.5735/2001 IN CRP.NO.2703/2001

Dismissed

20/7/2007

Sd/- P.R.RAMAN, JUDGE.

TRUE COPY

P.A. TO JUDGE

P.R.RAMAN J.

C.R.P.No.2703 OF 2001

Dated this the 20th day of July, 2007

O R D E R

This revision petition is filed by the plaintiff in O.S.No.493/1996. She died during the pendency of the proceedings and her legal representatives got impleaded as additional petitioners 2 to 4. Suit is one for injunction and recovery of possession. Defendants set up a claim of kudikidappu and by the order impugned in this revision, the matter was referred to the Land Tribunal based on Section 125 (3) of the Kerala Land Reforms Act. The said order is challenged in this revision.

2. The learned counsel appearing on behalf of the petitioners placed reliance on Exts.A1 and A2 documents said to have been executed in favour of the father of the respondents, one Muhammed, assigning an extent of three cents of land covered by these documents together. As such there exists no landlord-tenant relationship or landlord-kudikidappu relationship as the case may be, as of now and therefore the reference of the matter to the Land Tribunal is per se wrong and illegal. According to him, the court below having found that Exts.A1 and A2 have been executed by the plaintiff in favour of Muhammed, the predecessor in interest of the

respondents, there cannot be any further right of kudikidappu as contemplated under the Act. The court below repelled his contention holding that as per Section 80A (4)(e) of the Kerala Land Reforms Act, kudikidappukaran is entitled to purchase full extent of the land provided under Rule 3. Since this is a Panchayat area and the claim is for 10 cents of land, the question cannot be decided by a civil court instead it should be referred for a decision by the Land Tribunal, as the view taken by the court below. Sub Section 4 of Section 80A only deals with the extent of the land that could purchase, in case there are more kudikidappukars than one and if so, what is the maximum extent of the land which is liable to be purchased. As per Clause (e) of Sub Section 4, the maximum extent that could be purchased in no case shall exceed the extent specified in Sub Section (3). Therefore, Sub Section (4) is controlled by Sub Section (3) and at any rate in no way advance the case for making reference. The question as to what is the maximum extent that could be purchased by kudikidappukaran, if the hut or homestead situated in the land is only three cents or less than that really does not arise for consideration at this stage. Even though Section 80A provides the maximum extent, Sub Section 3 clearly provides that where the land available for purchase in which the kudikidappu is situate, or the land in which the kudikidappu is situate, is less than the extent specified in this sub section, the kudikidappukaran is entitled to purchase only the land available for

purchase or, as the case may be, the land in which the kudikidappu is situate. Anyway, this is a matter to be considered by the Land Tribunal based on the reference made by the civil court. Hence, I do not wish to express any final opinion on the merits of the contention, as it does not arise out of the order now passed.

3. The only question that arises for consideration is whether the order passed by the court below referring the matter to the Land Tribunal is legally correct. Even though Exts.A1 and A2 have been executed by the plaintiff in favour of the father of the respondents, the only modality by which the purchase of kudikidappu will be made is the provisions of the Kerala Land Reforms Act. That is to say, on filing an application before the competent Tribunal, after adjudicating the right of the parties, the Tribunal shall issue a purchase certificate. However, in this case, what was assigned is only three cents. Though there is a claim made by the defendants of an extent of ten cents, whether such extent is liable or not therefore should be considered by the competent authority. Because of the provisions of the Kerala Land Reforms Act the rights and liabilities on the parties, which are required to be decided by the Land Tribunal, cannot be decided by the civil court after 1/1/1970, in view of the bar under Section 125(3).

4. In such circumstances, I find that these are all questions to be considered by the Tribunal. So however, it cannot be said that the

reference made is in any way contrary to Section 125(3) of the Act. There is no error of law in the decision rendered by the court below. There is no merit in the C.R.P. It is accordingly dismissed.

Sd/-
P.R.RAMAN,
Judge.

kcv.

P.R.RAMAN, J.

C.R.P.NO.2703 OF 2001

O R D E R

20th July, 2007